

STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF MARION     )  
                                  )  
IN THE MATTER OF:     )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE

Arch Excess & Surplus       )  
Insurance Company            )  
10306 Regency Parkway Drive   )  
Omaha, Nebraska 68113        )  
                                  )  
                                  )  
Market Conduct Examination   )

WARRANT NUMBER: IDOI-MC07-0627-042

**FILED**

AUG 11 2009

STATE OF INDIANA  
DEPT. OF INSURANCE

**FINAL ORDER ADOPTING AGREEMENT TO RESOLVE MARKET  
CONDUCT EXAMINATION**

The Indiana Department of Insurance ("Department") and Arch Excess & Surplus Insurance Company ("Arch") signed an Agreement to Resolve Market Conduct Examination (the "Agreement") resolving all issues concerning the market conduct examination of Arch and submitted the Agreement for approval and adoption by the Commissioner of the Department of Insurance ("Commissioner").

The Commissioner, after reviewing the Agreement, finds it has been entered into fairly and without fraud, duress or undue influence, and it is fair and equitable between the parties. The Commissioner hereby incorporates the Agreement and its terms and conditions as if fully set forth herein, and is attached as "Exhibit A", and approves and adopts the Agreement as a resolution of the market conduct examination.

IT IS NOW ORDERED:

1. The Commissioner has subject matter jurisdiction over the matters at issue in this administrative proceeding and personal jurisdiction over Arch.

2. Arch was represented by legal counsel, understands the terms and scope of this Agreement and voluntarily entered into this Agreement without duress.
3. Arch understands that failure to comply with the Agreement and this Final Order Adopting Agreement to Resolve Market Conduct Examination may result in further administrative actions or consequences.
4. Within thirty (30) days of the date of this Final Order Arch shall remit to the Indiana Department of Insurance Six Hundred Eighty Thousand Dollars (\$680,000) to be deposited into the Indiana Patient's Compensation Fund.
5. This Order, as per the Agreement, is not subject to judicial review.

ALL OF WHICH IS ORDERED THIS 11<sup>th</sup> day of August, 2009.



Carol Cutter, Commissioner  
Indiana Department of Insurance

Distribution to:

Debra M. Webb, Attorney  
Consumer Protection Unit  
Indiana Department of Insurance  
311 W. Washington Street, Suite 300  
Indianapolis, IN 46204

J. Mark McKinzie, Attorney for and on behalf of  
Arch Excess & Surplus Insurance Company  
Fourth Floor  
141 E. Washington Street  
Indianapolis, IN 46204

STATE OF INDIANA	)	BEFORE THE INDIANA
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COUNTY OF MARION	)	COMMISSIONER OF INSURANCE
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IN THE MATTER OF:	)	
Arch Excess & Surplus	)	WARRANT NUMBER: IDOI-MC07-0627-042
Insurance Company	)	
10306 Regency Parkway Drive	)	
Omaha, Nebraska 68113	)	
	)	
	)	
Market Conduct Examination	)	

**AGREEMENT TO RESOLVE MARKET CONDUCT EXAMINATION**

This Agreement to Resolve Market Conduct Examination ("Agreement") resolving the above captioned Market Conduct Examination (the "Examination") is executed by Debra M. Webb, Attorney for and on behalf of the State of Indiana, Consumer Protection Unit of the Indiana Department of Insurance ("Department") and the Indiana Patient's Compensation Fund ("PCF"); and a duly authorized signatory for Arch Excess & Surplus Insurance Company ("Arch"), an insurance company authorized to do and engaged in business in Indiana. This Agreement is subject to the review and approval of Carol Cutter, the Commissioner of the Indiana Department of Insurance ("Commissioner").

WHEREAS, the Department has the authority pursuant to Indiana Code Sections 27-1-1-1 and 27-1-3.1-9 to conduct examinations of any insurance company licensed in Indiana as often as the Commissioner, in the Commissioner's sole discretion, considers appropriate; and

WHEREAS, the Department is responsible for enforcing the statutory provisions applicable to companies engaging in the business of insurance in the State of Indiana; and

**EXHIBIT**

A

WHEREAS, on June 27, 2007, the Department issued Examination Warrant No. IDOI-MC07-0627-042, pursuant to Indiana Code 27-1-3.1 *et seq.*, for the purpose of determining whether Arch had adequately contributed surcharges to the PCF; and

WHEREAS, pursuant to the authority provided in Indiana Code Section 27-1-3.1-9(d), the Commissioner appointed Milliman Consultants and Actuaries ("Milliman") as examiner for the purpose of examining Arch's policies and files in connection with the PCF surcharge submissions to determine Arch's compliance with Indiana insurance laws: and

WHEREAS, the PCF is funded solely through the annual surcharges paid by health care providers; and

WHEREAS, all health care providers electing to be qualified under the Indiana Medical Malpractice Act through their insurers that provide liability coverage must submit the appropriate surcharge amount to the PCF; and

WHEREAS, Arch submitted Certificates of Insurance to the Department verifying financial responsibility for certain health care providers; and

WHEREAS, on August 4, 2008, Milliman filed a verified Report with the Department as a result of the market conduct examination pursuant to Indiana Code Section 27-1-3.1-10(b); and

WHEREAS, said Report finds an underpayment of Two Million Six Hundred Thousand Dollars (\$2.6 Million) had been made to the PCF by Arch on behalf of its insureds; and

WHEREAS, Arch has submitted to the Department a written rebuttal wherein it disputes the methodology employed by the Department and its examiners in determining the surcharges and therefore the findings and conclusions by Milliman in the Report; and

WHEREAS, Arch asserts that it at all times submitted annual surcharges in full compliance with Indiana Code 34-18-5-2 (d); and

WHEREAS, On June 2, 2009, Commissioner Jim Atterholt issued a Final Order in the Matter of the Market Conduct Examination of Arch Excess & Surplus Insurance Company under Warrant No. IDOI-MC07-0627-042 (the "Final Order"); and

WHEREAS, on July 2, 2009, Arch filed in the Superior Court of Marion County, Cause No. 49D02-09-07-MI-031565 a Verified Petition for Judicial Review of the Final Order; and

WHEREAS, that Petition for Judicial Review is pending; and

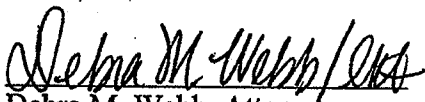
WHEREAS, the Department and Arch desire to resolve their differences and settle the issues relating to the Examination without further adjudicative efforts;

NOW, THEREFORE, the parties agree to the following;

1. The Commissioner has jurisdiction over the subject matter and Arch in all matters relating to the PCF.
2. This Agreement is executed voluntarily by the parties.
3. Arch further waives its rights to continue its judicial review of the Final Order.
4. This Agreement is not, and shall not be construed as, an admission of liability by Arch.

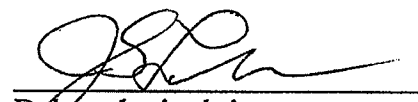
5. Arch will remit to the Department for the PCF the sum of Six Hundred Eighty Thousand Dollars (\$680,000). Arch will remit this amount no later than thirty (30) days following the date of the Order adopting this Agreement.
6. The Department agrees to accept Arch's compliance with the terms of this Agreement as full resolution of the Examination, and further agrees that this Agreement applies to and fully resolves all claims, demands, and actions of any kind that the Department has asserted or could have asserted in the Examination against Arch related in any way to the PCF.
7. Upon execution of the Final Order by the Commissioner adopting this Agreement, Arch will immediately move to Dismiss with Prejudice its Verified Petition for Judicial Review previously filed in Marion County Court.
8. Arch and the Department have read and understand the terms of this Agreement and agree to be bound by the terms and conditions set forth herein.

INDIANA DEPARTMENT OF INSURANCE  
CONSUMER PROTECTION UNIT

  
Debra M. Webb, Attorney  
Market Regulation

08-10-09  
Date Signed

ARCH EXCESS & SURPLUS  
INSURANCE COMPANY

  
Duly authorized signatory  
for Arch Excess & Surplus

Joseph S. Labell  
Vice President & Deputy General Counsel  
Printed and Title

8/10/09  
Date Signed

Distribution to:

Debra M. Webb, Attorney  
Consumer Protection Unit  
Indiana Department of Insurance  
311 W. Washington Street, Suite 300  
Indianapolis, IN 46204

J. Mark McKinzie, Attorney for and  
on behalf of Arch Excess & Surplus  
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